

**Michigan State University
Resolution Agreement
OCR Docket #15-18-6901**

Michigan State University (the University, or MSU) has entered into this Resolution Agreement to resolve the above-referenced directed investigation and to ensure the University's compliance with Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 *et seq.*, and its implementing regulation, 34 C.F.R. Part 106. The University shall not be deemed to have made any admission of liability by the negotiation, entry into, or performance of the terms or conditions of this Resolution Agreement.

- I. Title IX Structure:** To ensure that the University's Office of Civil Rights and Title IX Education and Compliance (Title IX Office) has the independent authority to address and respond appropriately to reports of sex discrimination, and to avoid potential conflicts of interest, by January 6, 2020, the University will amend its Title IX investigation structure, to the extent the structure is not already in place, as follows:
- A.** The University will require any individual employed in the University's Title IX Office who previously provided legal representation to the University on any matter involving Title IX to recuse themselves from any Title IX matter that was pending with the University while they were providing legal representation to the University, if any of the following are true:
- the individual previously provided legal advice on or relating to the Title IX matter;
 - the individual exercised oversight over the Title IX matter; or
 - the Title IX matter involves one or more of the same parties as a Title IX matter over which the individual previously exercised oversight or on which the individual provided legal advice.
- B.** The University will continue to ensure that none of its Title IX coordinators, Office of Institutional Equity (OIE) investigators, persons making decisions regarding whether a Title IX or University policy violation occurred, or any medical or scientific expert the University calls upon for an independent opinion in the course of a Title IX investigation, have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. To the extent necessary, the University will revise its existing conflicts of interest policy to include medical and scientific expert witnesses and to explicitly state that any expert witness determined to have an actual or apparent conflict of interest shall be prohibited from serving as an expert witness or otherwise participating in the investigation or resolution of the matter for which the conflict exists absent a waiver by all parties.
- C.** The University will review the oversight structure of the Title IX Office and ensure that the Title IX Office continues to report directly to the President, that it has the appropriate authority to effectively coordinate the University's compliance with

Title IX, and that it oversees all of the University's Title IX investigations. The University will make any necessary changes pursuant to this review to ensure that it has the proper authority and independence free from undue influence or pressure from other individuals or units within the University.

- D.** For a period of three academic years beginning with the 2019-2020 academic year, the University will commission an independent third-party consultant, who has not previously provided legal representation to the University on any matter involving Title IX, to review the University's Title IX grievance process. The third-party consultant will review the University's Title IX completed investigations and final determinations to provide an outside assessment of whether the University policies have been adhered to and whether those policies are compliant with governing legal standards. The third-party consultant will submit a written report of the results of its reviews and any recommendations for additional action based thereon to the Title IX Coordinator, the OGC, the University's President, and the Chairperson of the Board of Trustees by January 31 and June 30 of each year of the third-party consultant's work for the University. This consultant's review is not intended to serve as an appeal from the final determinations being reviewed, nor is it intended to empower the third-party consultant to overturn or recommend overturning final determinations made.

Reporting Requirement: By January 6, 2020, the University will revise its Title IX processing structure as described in items I.A, B, and C above, formally adopt any revisions, and provide OCR with a copy of document(s) reflecting the revisions. Within sixty (60) calendar days of receipt, the University will submit to OCR the third-party consultant's reports pursuant to item I.D above and, for OCR's review and approval, a proposed action plan to respond to the third-party consultant's recommendations. Within fourteen (14) calendar days of receiving OCR's approval of the University's action plan, the University will begin implementing the action plan and the University's Title IX coordinator will certify to OCR that the University has begun the process of implementing the action plan. The University may begin implementing the action plan pending OCR's approval but doing so will not eliminate OCR's approval authority and the possibility that the University may have to modify the action plan.

For a period of three academic years beginning with the 2019-2020 academic year, the University will provide OCR copies of all completed Title IX complaint files, including final reports and written determinations, processed under the revised structure. The University shall deliver copies of all completed Title IX complaint files to OCR by the 60th day following the close of the academic year to which the reports and determinations were completed.

- II. Title IX Procedures:** To ensure that the University's students and employees know the University's non-discrimination policy and how to report incidents of sex discrimination, by January 6, 2020, the University will draft and submit to OCR for review and, within 45 calendar days of OCR's approval, will adopt, publish, and implement for a period of three years from the date of publication, the following changes to its Title IX procedures and any procedures governing personnel file maintenance:

- A. Notice:** The University will continue to ensure that its notice of nondiscrimination and anti-harassment statement are posted prominently on its website and contain current information. Additionally, the University will post the notice of nondiscrimination and anti-harassment statement in the places that Title IX and its implementing regulation require postings of ongoing notice as well as the places where the Departments of Student Affairs and Athletics regularly post physical notices to students and student athletes. Furthermore, the University will email the campus community—including students, employees, and youth program participants—a copy of, or a one-click link to, this Agreement, the notice of nondiscrimination, and the anti-harassment statement.
- B. Notice to the President and Board of Trustees:** The President and Chair or a Chair-designated member (or members) of the Board of Trustees who is (are) a member (members) of a Board committee or subcommittee with responsibility for reviewing such reports shall receive a report identifying all open and recently resolved Title IX complaints filed against an employee in their capacity as an employee, and shall receive a copy of all corresponding final investigative reports and written determinations issued during the semester. Such report shall be received not more than 30 days after the close of each semester.
- C. Response to Complaints and Reports of Sex Discrimination:** To ensure that the University continues to have a comprehensive process for responding appropriately to notice of sex discrimination, the University will issue a statement, distributed to all of its employees, that the University will promptly forward all Title IX reports received by “responsible employees” (described in Section H, below) of which it is aware to the Title IX Office. Reports to confidential resources are not considered reports to the University.
- D. Documentation:** The University will document actions it takes in response to Title IX complaints at each stage of its investigation and grievance process, including when imposing sanctions against an employee, and will clearly identify all of the actions it takes that are responsive to Title IX complaints.
- E. Independent Experts:** The University’s Title IX procedure, which currently prohibits use of medical expert witnesses who have an actual or apparent bias or conflict of interest, will be amended to extend this same limitation to other scientific experts. The University will amend its procedure as necessary to ensure that all parties have an equal opportunity to provide expert witnesses, that expert witnesses are identified as such in any final written report, and that the final report reflects that to the extent experts were used, the Title IX Coordinator determined that the expert did not have a conflict of interest.
- F. Investigation Reports and Final Determinations:** To ensure that Title IX proceedings are equitable to the parties, the University will continue its revised, current policy of providing the same preliminary investigative report for response

prior to the issuance of the final investigative report or final determination and the same final investigation report or final determination.

- G. New Evidence / Reconsideration:** To ensure that the University's Title IX investigations and final determinations are equitable in light of newly discovered evidence, the University will provide a process for determining when it must reopen a previously completed matter due to newly discovered evidence.
- H. Reporting Title IX Discrimination:** The University will designate "responsible employees" in accordance with the law and regulations in effect as of the time of the designation and require that such employees report possible sex discrimination of which they are on notice to the Title IX Office. The University will maintain and publish to persons then designated as responsible employees its policies and procedures to define the conduct that employees must report to the Title IX Office, describe how the University will determine if the policy on reporting has been violated, and describe the consequences for violating the policy and how the University will implement and document those consequences.
- I. Prohibition of Retaliation:** The University will post a statement on the home page of its website, on its Title IX web page, and in its Notice of Nondiscrimination that Title IX prohibits retaliation against reporters of sex discrimination, including reports of sex discrimination against administrators and other employees. The statement will include assurance that the University will independently investigate alleged retaliation for participation in the Title IX process. The University will distribute the statement to all employees and students at the beginning of each academic year.
- J. Personnel Files:** To ensure that Title IX investigations and, if appropriate, violation findings are recorded in a manner to ensure institutional knowledge of the same, the University will require that the existence of all final Title IX reports and determinations against staff, faculty, and administrators are noted in the respondent's personnel file, consistent with state and local laws, University policies, and applicable collective bargaining agreements. The notation shall provide a summary of the nature of the allegations in sufficient detail for a reasonable reviewer to identify potential patterns of behavior, indicate whether a finding of violation was made and, if so, the sanctions imposed. The University shall notify its employees of the consequences of failing to comply with this requirement.

Reporting Requirement: By January 6, 2020, the University will provide a draft of the revised Title IX procedures and any procedures governing personnel file maintenance for OCR's review and approval. Within 45 calendar days of OCR's approval of the revised Title IX and personnel file procedures, the University will provide OCR with documentation that it has adopted and disseminated the revised Title IX and personnel file procedures, including copies of any electronic notices sent to students and employees, as well as a link to an online publication containing the revised Title IX and personnel file procedures.

- III. Employee Sanctions:** The University will review the actions of those current and former employees who had notice or were reported to have received notice of complaints or concerns of sex discrimination committed by either Employee X or the Dean and failed to take appropriate action in regard thereto. If the University's review determines that such person did receive a complaint of sex discrimination, the University will review whether that person failed to adequately respond in accordance with all then-applicable laws and University policies. If so, the University will then determine what further responsive steps, if any, must be taken with regard to that person. The University will document any actions taken in the employee's or former employee's personnel file, consistent with the revisions to its policies pursuant to item II.J, and the University will document any investigation or any action taken in accordance with its existing policies as revised pursuant to items II.D and II.H of this Agreement. The University will not be required to engage in actions that are inconsistent with its obligations under governing law and applicable collective bargaining agreements related to the employment relationship and due process concerns stemming from the public nature of the person's employment or former employment.

The list of employees subject to review under this item must include the former President (as of the 2015-2016 academic year), the Provost, the Associate Vice President for Academic Human Resources, employees of the Office of the General Counsel, and the former head coach of the women's gymnastics team; however, the University's review must go beyond this non-exhaustive list and include current or former responsible employees who have been identified by name, title, or position in University memoranda, Title IX reports, or police reports as having received notice of complaints or concerns of sex discrimination committed by either Employee X or the Dean, and failed to take appropriate action in regard thereto. The University may be limited in its ability to investigate based on the availability of evidence or witnesses.

Responsive actions to be considered include, but are not limited to, the following: disciplinary proceedings; revocation of tenure; revocation of honorary and other titles; demotion; reassignment; prohibition from University facilities, programs, and activities; removal of benefits; pay reductions; removal of housing benefits; permanent removal from administrative roles; revocation of honorary and other titles; prohibition from University facilities, programs, and activities; and/or other responsive action.

Reporting Requirement: By August 1, 2020, the University will provide OCR a copy of its documents regarding the review of each employee or former employee, including any interview memoranda, evidentiary documents, and a copy of each written report of its findings, including documentation of justifications for each action to be taken or determined not to be taken. By October 1, 2020, the University will provide OCR with documentation verifying any actions that have been taken with respect to each employee or former employee.

IV. Climate & Training:

- A.** The University will take measures to determine the impact of the conduct of Employee X and the Dean at the College of Osteopathic Medicine and the MSU Sports Medicine

Clinic on students' and employees' equal access to University education programs and activities. The University will then take action to address any impact determined to exist by, for example, providing appropriate remedies as necessary to restore their access to the University's programs and activities. Appropriate remedies here and in Section VI may include counseling services, grade adjustments, tuition reimbursement, the opportunity to retake classes without penalty or additional costs, academic assistance, performance evaluation adjustments, or other services to affected current students and employees.

- B. The University will assess the potential benefits and detriments of revising its anti-harassment training to include training targeted at student athletes. Based on its assessment, the University will revise its anti-harassment training as necessary to ensure that student athletes receive training to help them identify sexual harassment or assault that is covered by Title IX and that occurs in the context of medical treatment, which may be more difficult to identify.
- C. University officials, including the Board of Trustees and President, select staff from the Title IX Office and OGC, and select administrators will receive comprehensive Title IX training from OCR. The University may propose that additional officials and staff attend the training as appropriate.

Reporting Requirement: By February 1, 2020, the University will provide OCR with copies of any climate assessments it conducted in response to the Title IX concerns raised in relation to Employee X and the Dean, and documentation of all steps it has taken in response to the assessments. By March 1, 2020, the University will provide OCR with documents showing that it offered the services referenced above, such as any letters or memoranda to the students and employees of the College of Osteopathic Medicine and MSU Sports Medicine Clinic. By June 1, 2020, the University will provide OCR with documentation verifying the specific services it is providing to any such individuals to address the impact of the conduct by Employee X and the Dean. Additionally, by November 1, 2019 the University will provide OCR with documentation demonstrating its assessment of the potential benefits and detriments of the targeted anti-harassment training program for student athletes. By May 3, 2020, the University will also provide OCR with documents showing that it implemented any targeted anti-harassment training in accordance with IV.B. Finally, by September 30, 2019, the University will schedule with OCR the comprehensive Title IX training for its officials.

- V. **Youth Programs¹:** To ensure that the University exercises adequate Title IX oversight over its youth programs, the University will notify its Youth Program participants of its

¹ The University defines Youth Programs on its website as follows: "Any class, camp, program, or other learning activity that includes participation by minors. The term "youth program" does not include (1) private, personal events (e.g., birthday parties, weddings) that occur at University facilities, or (2) events open to the general public (e.g., intercollegiate athletic events, concerts, Wharton Center events)." See https://www.hr.msu.edu/policies-procedures/university-wide/youth_program_operation.html

Title IX grievance procedure and that the procedure applies to Youth Programs. The University can utilize the existing Youth Programs Policy and handbook templates referenced on the University's website to publish the notice, and the notice will include the following:

- A. notice that the procedure applies to complaints alleging all forms of sex discrimination (including sexual harassment and sexual assault) against youth program participants;
- B. notice of the procedure and how to file a complaint that is easily understood, easily located and widely distributed; such notice must include the contact information (name or title, office address, email address, and telephone number) for the individual with whom complaints may be filed; and
- C. the name, title, and contact information (phone number, office address, and email address) of the University's Title IX Coordinator and notice regarding the role and duties of the Title IX Coordinator and the Title IX office in the processing of complaints of sex discrimination, including sexual harassment, sexual assault, and sexual violence.

Reporting Requirement: By October 15, 2019, the University will provide OCR with a copy of the revised Youth Program Handbook templates and URL(s) and links to the Youth Programs Policy referenced above.

VI. Individual Remedies: To fully assess and remedy any sex discrimination that Employee X or the Dean caused that has denied a student the ability to participate in or benefit from the University's program, or that unreasonably interfered with an individual's work performance or opportunities, the University will implement the following actions:

- A. **Employee X:** The University will post a notice for a period of 180 days on the home page of the University's website inviting students, former students, employees and former employees who were subjected to sexual harassment/assault by Employee X to contact the Title IX Office. The notice must state that individuals may be entitled to appropriate remedies as necessary to restore their access to the University's programs and activities. Appropriate remedies may include counseling services, grade adjustments, tuition reimbursement, the opportunity to retake classes without penalty or additional costs, academic assistance, performance evaluation adjustments, or other services to affected students and employees. In response to each such report received, the Title IX Coordinator will take reasonable steps to verify the need for remedial action by communicating with the student, former student, employee or former employee, and within 30 calendar days, respond in writing to each person who filed such a report. The notice may state that individuals who have signed releases of liability may not be eligible for further investigative or remedial actions.

The University will also open and/or complete all investigations of reports or complaints made prior to the date of this Agreement to the Title IX Office that Employee X engaged in sexual or sex-based harassment that denied a University

student or employee equal access to its education programs or activities. The University's investigation will determine in each individual instance, whether and to what extent accommodations and remedial measures are appropriate. The University shall not be required to open/reopen or complete any investigation with respect to: (a) any person who declined the University's offer to participate in a full investigation of Employee X's behavior toward them; (b) any person who has signed a release or waiver of liability that encompasses liability for harms arising out of or related to Employee X's conduct; or (c) any person who is engaged in ongoing litigation with the University.

If the University determines that Employee X engaged in sexual and/or sex-based harassment that denied a University student or employee equal access to its education programs or activities, the University will take measures to ensure that it restores the complainant's equal access to its education programs and activities, such as counseling services, grade adjustments, tuition reimbursement, the opportunity to retake classes without penalty or additional costs, academic assistance, performance evaluation adjustments, or other services to affected current students and employees.

The University has engaged in some remedial action concerning individual alleged victims of misconduct by Employee X, much of which resulted from litigation in federal court and the subsequent settlement fund, wherein the University has offered cash settlements to persons subjected to sexual misconduct by Employee X in exchange for release of liability and their waiver of any right to further relief. The University has taken other remedial measures as well, including offering support services and inviting student athletes to make a report to the University's police department (MSUPD) or OIE. In responding to any requests for accommodation or remedial measures by a student, former student, employee or former employee, the University may consider remedial actions it has already provided, such as services or funding from a healing fund, and assess whether a remedial request is duplicative. The University shall not be required to duplicate any accommodation or remedy previously provided and shall not be required to provide accommodations or remedies to any person who has signed a release or waiver of liability that encompasses liability for harms arising out of or related to Employee X's conduct.

Reporting Requirement: By September 30, 2019, the University will provide OCR with a link to the notice that it posts on its website as described above. By May 30, 2020, the University will provide OCR with copies of all communications with students, former students, employees or former employees under this item and documentation of any investigations it completed and remedies or actions it took in response to its findings.

- B. Investigations Against the Dean:** By August 30, 2019, the University will complete all open Title IX investigations against the Dean. Investigations of any additional Title IX complaints the Title IX Office receives against the Dean will be completed promptly. At the completion of the investigations, if the University determines that the Dean engaged in sexual and/or gender-based harassment that denied a University student or employee equal access to its education programs or activities, the University

will take measures to ensure that it restores the complainant's equal access to its education programs and activities. This should include remedies necessary to address any delay in the University's processing the complaint allegations, such as grade adjustments, counseling, tuition reimbursement, performance evaluation adjustments, academic assistance, the opportunity to retake classes without penalty or additional costs, or other services to affected individuals.

Reporting Requirement: By August 30, 2019, the University will provide copies of all of the final investigative reports regarding all complaints against the Dean made as of this date. As appropriate, by December 14, 2019, the University will provide copies of documents showing the measures the University took to remedy sexual and/or gender-based harassment and prevent its recurrence.

General Requirements

The University understands that, by signing this Resolution Agreement, it agrees to provide the foregoing information in a timely manner in accordance with the reporting requirements of this Resolution Agreement. Further, the University understands that during the monitoring of this Resolution Agreement, if necessary, OCR may visit the University, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the University has fulfilled the terms of this Resolution Agreement and is in compliance with Title IX and its implementing regulation at 34 C.F.R. §§ 106.8 and 106.31. OCR will monitor the University's compliance with the terms of this Resolution Agreement for a period of three years, commencing on the date the University executes the Resolution Agreement, and upon completion of the obligations under this Agreement, OCR will close this case.

The University understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Resolution Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings to enforce this Resolution Agreement, OCR shall give the University written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

Date: 9/5/19